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In the Supreme Court of the United States

OCTOBER TERM, 1929

FRED O. GOODELL, COLLECTOR OF INTERNAL REVENUE, APPELLANT (BELOW)

v.

I. B. KOCH, APPELLEE (BELOW)

ON CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

JOINT MOTION TO BRING UP THE ENTIRE RECORD

In the Supreme Court of the United States

OCTOBER TERM, 1929

No. 882

FRED O. GOODELL, COLLECTOR OF INTERNAL REVENUE, appellant (below)

v.

I. B. KOCH, APPELLEE (BELOW)

ON CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

JOINT MOTION TO BRING UP THE ENTIRE RECORD

Now come Fred O. Goodell, Collector of Internal Revenue, Appellant, and I. B. Koch, Appellee, in this cause in the United States Circuit Court of Appeals for the Ninth Circuit, now pending in this Court on questions certified by the said Circuit Court of Appeals, and move that this Honorable Court issue its writ of certiorari commanding that court to certify and send to this Court the entire record in this cause, in order that this Court may consider and decide the whole matter in controversy as upon appeal pursuant to Section 239 of the

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Judicial Code as amended by the Act of February 13, 1925, and Rule 37 of the Rules of this Court.

A certified transcript of the record in this case and nine printed copies thereof have been lodged with the Clerk of this Court as exhibits to this motion.

This was a suit commenced in the United States District Court for the District of Arizona by I. B. Koch, a resident of the State of Arizona, against Fred O. Goodell as Collector of Internal Revenue for the District of Arizona, to recover Federal income taxes paid under protest for the year 1927. The Commissioner of Internal Revenue refused to accept the separate returns filed by Koch and his wife in which each had reported one-half of the community income and made an assessment against Koch based on the inclusion in his return of the entire community income. The action was begun by Koch to recover the amount of the additional tax thus imposed and collected. From a judgment in favor of the plaintiff, the Collector duly appealed to the United States Circuit Court of Appeals for the Ninth Circuit, which court, by certificate filed May 8, 1930, has certified to this Court the following questions:

> (1) Under the provisions of Sections 210 and 223 (b) of the Revenue Act of 1926 must the entire community income of a husband and wife domiciled in Arizona be returned and the income tax thereon paid by the husband?

(2) Has the wife under Sections 3848 and 3850, Revised Statutes of Arizona, 1913, such an interest in the community income that she should separately report and pay tax on one-half of such income?

While the questions certified cover all the decisive issues in this case, it is desirable in view of the importance of the question to the Government and to taxpayers residing in Arizona to avoid any possibility of further litigation by bringing up the entire record and having the Court finally determine the whole controversy.

A similar motion is being made in the case of *Burns Poe, Collector of Internal Revenue for the District of Washington,* v. *H. G. Seaborn,* No. 492 on the docket of this Court for the present term, which is also on certificate from the Circuit Court of Appeals for the Ninth Circuit, and involves the question of the taxation of community income in Washington. The Government is also submitting simultaneously herewith a motion to advance that case, the instant case, and also, in the event certiorari is granted, two other cases, involving the taxation of community income in Texas and Louisiana (*Hopkins, Collector, Petitioner,* v. *Bacon,* No. 821; *Bender, Collector, Petitioner,* v. *Pfaff,* No. 823), for hearing in sequence on October 27th next. It is believed that it would be of assistance to the Court to have before it at the hearing the entire record in the instant case.

Wherefore, the parties hereto jointly pray that this Honorable Court issue its writ of certiorari commanding the United States Circuit Court of Appeals for the Ninth Circuit to certify and send to this Court the entire record in this cause in order that this Court may consider and decide the whole matter in controversy as upon appeal.

FRED O. GOODELL,
Collector of Internal Revenue
For the District of Arizona.
By THOMAS D. THACHER,
Solicitor General.
I. B. KOCH,
By FRANK E. CURLEY,
SAMUEL L. PATTEE,
H. A. ELLIOTT,
B. B. SHIMMEL,
Attorneys.

MAY, 1930.

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